

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEFFREY S. ANDERSON,

Plaintiff,

v.

DAVID SOUKUP, *et al.*,

DefendantS.

Case No. C07-5350 RJB/KLS

REPORT AND RECOMMENDATION

Noted For: February 29, 2008

This matter comes before the Court on Plaintiff's failure to comply with the Court's Order directing Plaintiff to file an amended complaint. (Dkt. # 10). Plaintiff was given until November 30, 2007 to file an amended complaint. He has not done so nor has he requested an extension of time within which to comply with the Court's Order.

I. DISCUSSION

Plaintiff is currently a prisoner at the Washington Corrections Center in Shelton, Washington. (Dkt. # 9). According to the allegations contained in Plaintiff's Complaint, Plaintiff was arrested on January 13, 2007 by the Thurston County Sheriff in the City of Tumwater on a "warrant and for eluding a police vehicle charge." (Dkt. # 4, p. 5). When he ran from the vehicle he was chased to an irrigation pond where he stumbled and fell into icy water. (*Id.*) He asserts that a pursuing officer tazed him, even though Plaintiff was already incapacitated and was no longer a flight risk. (*Id.*). Plaintiff alleges further that the tazing affected his already injured neck by rupturing a nerve, which controls feeling and motor skills to his left arm. (*Id.*).

1 In addition to the medical injury caused by the tazing, Plaintiff alleges that has been held in
2 the Thurston County jail since January 13, 2007 without bail. (*Id.*, p. 6). Plaintiff claims he has
3 been incorrectly charged with an additional felony, resulting in an improper change in status of his
4 crime to second degree. (*Id.*, p. 7). Plaintiff also alleges that his counsel has been ineffective in
5 assisting him in his defense and that the deputy prosecutor, David Soukup, was arrested on DUI
6 charges. (*Id.*). In light of these allegations, Plaintiff claims that he cannot hope to have a fair trial.
7 (*Id.*).

8 Plaintiff names as Defendants, David Soukup, Thurston County Jail Medical Staff, Robert
9 Jimmerson and two unknown Thurston County Police Officers. (*Id.*, p. 1). Plaintiff seeks (1)
10 release from jail during pre-disposition incarceration; (2) the removal of David Soukup as
11 prosecutor in his case; (3) \$1,000 per day for the six months he has been held without bail; (4)
12 \$50,000.00 in damages for the injury to his neck; (5) extra damages for being denied physical
13 therapy; and (6) that “this [be] perpetuated to insure this never happens to anyone in the future.”
14 (Dkt. # 1, p. 4).

15 On August 8, 2007, the Court directed Plaintiff to show cause why his Complaint should not
16 be dismissed for failure to state a claim under 42 U.S.C. § 1983, because Plaintiff appears to be
17 challenging the validity of his arrest and current incarceration at the Thurston County jail without
18 bail. (Dkt. # 5). The Court advised Plaintiff of the elements necessary to state a claim under 42
19 U.S.C. § 1983, and noted that if Plaintiff was seeking dismissal of an ongoing criminal action in
20 Washington state court, such an action would not lie in Section 1983. (*Id.*)

21 The Court construed Plaintiff’s Complaint (Dkt. # 4) as broadly as reasonable under the
22 circumstances and concluded that Plaintiff had alleged two possible claims of civil rights violations
23 under 42 U.S.C. § 1983, including a claim of excessive force by the two Thurston County police
24 officers during Plaintiff’s arrest and a claim of inadequate medical treatment at the hands of the
25 Thurston County Jail Medical Staff. (Dkt. # 10, pp. 2-3). Plaintiff was granted leave to pursue

1 those causes of action if he could amend his Complaint to properly cure the deficiencies as outlined
2 in the Court's Order granting leave to amend. (*Id.*)

3 For example, Plaintiff was advised that although he alleged inadequate medical treatment
4 for wounds suffered at the hands of the police officers who arrested him, his Complaint lacked
5 allegations of how any named defendant denied treatment, or delayed or interfered with treatment
6 proscribed or ordered by medical personnel. (*Id.*, p. 3, *citing* Dkt. # 4). In addition, Plaintiff was
7 advised that naming the "Thurston County Jail Medical Staff," as a Defendant was insufficient
8 without allegations that the jail staff were acting pursuant to any policy, custom, or pattern that
9 violates plaintiff's civil rights, or that the medical department ratified any unlawful conduct. *Id.*
10 Plaintiff was also advised of the need to allege facts showing what treatment he asked for, what
11 treatment was given and which individual defendant provided or denied the treatment. *Id.*, p. 4.

12 Plaintiff was instructed to file an amended complaint curing, if possible, the deficiencies
13 outlined in the Court's Order by November 30, 2007. *Id.*, p. 5. He has not done so nor has he
14 requested an extension of time within which to comply with this Court's Order. Accordingly, this
15 Court recommends that this action should be dismissed as frivolous for failure to state a claim and that
16 the dismissal should be counted as a strike pursuant to 28 U.S.C. 1915(g).


17 II. CONCLUSION

18 Plaintiff has failed to state a claim as a matter of law under 42 U.S.C. § 1983. The action
19 should be **dismissed without prejudice, and the dismissal counted as a strike pursuant to 28**
20 **U.S.C. 1915 (g)**. A proposed order accompanies this report and recommendation.

21 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure,
22 the parties shall have ten (10) days from service of this Report and Recommendation to file written
23 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
24 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time
25 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **February**

1 **29, 2008**, as noted in the caption.

2 DATED this 4th day of February, 2008.

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5 Karen L. Strombom
6 United States Magistrate Judge
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